



... unites Ontario's municipalities

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**"Towards New
Heritage Legislation
for Ontario"**

Association of Municipalities of Ontario
August 1990

MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- ♦ developing and effectively promoting responsive quality policy;
- ♦ informing and educating governments, the media and the public;
- ♦ marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- ♦ diversity and local autonomy;
- ♦ fairness and equity;
- ♦ consultation;
- ♦ consensus;
- ♦ co-operation.

TOWARDS NEW HERITAGE LEGISLATION FOR ONTARIO

TABLE OF CONTENTS

	Page
1.0. Introduction	1
2.0. Ontario Heritage Policy Review - Intergovernmental Consultation Process	2
3.0. Content Issues Addressed by the Proposed Legislation	3
3.1. Definitional Framework and Purpose of the Legislation	3
3.2. Distribution of Roles and Responsibilities among various Stakeholders in the Heritage Field	5
3.3. Provincial Inventory of Heritage Places	8
3.4. Provincial and Municipal Registration/Designation of Heritage Resources	9
3.5. Appeals	14
3.6. Protection	15
3.7. Enforcement	17
3.8. Provincial and Municipal Inducements for Heritage Conservation	19
3.9. Provision of Technical Expertise	20
4.0. Format of the Proposed Legislation	22
5.0. Conclusion	23
6.0. Summary of Recommendations	24
References	29
Appendix A: Definition of Movable, Immovable and Intangible Heritage ...	31

"Humanity has the ability to make development sustainable - to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply limits - not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities (The World Commission on Environment and Development, 1987, p.8)."

1.0. Introduction

Heritage conservation is a vital issue not only for this generation but for the many future generations to come - if we fail to preserve the valuable heritage resources we possess today, we deprive future generations of the enjoyment of valuable legacies of human existence on this planet.

Historical Perspective

The following paper presents AMO's response to the proposed provincial legislation on heritage conservation released by the Ministry of Culture and Communications on May 09, 1990. The present report constitutes a continuation of AMO's previous submissions to the provincial government regarding the issue of heritage conservation: thus, AMO undertook a critique of the Ontario Heritage Act in 1981 (AMO Report 48) and developed a policy position with respect to the provincial discussion paper "Giving our Past a Future" in 1987. The ensuing discussion will draw on important elements of the historical policy perspective assumed in the two identified AMO documents.

Municipal- Provincial Partnership

In analyzing the proposed statute for heritage legislation in the province of Ontario I will draw upon key principles governing the municipal-provincial partnership as envisioned in two previous AMO publications - "New Dimensions - Discussion Paper of AMO Conditional Grants Review (1990)" and "Reforming the Partnership - AMO Submission to the Provincial Cabinet (1990)".

Format of the report

Legislation is rarely drafted under exclusive headings but rather consists of an interrelated web of a myriad of sections. In order to facilitate the discussion and avoid repetition I have grouped the issues under discrete yet interrelated headings including intergovernmental consultation, definitional framework and purpose of the legislation, distribution of roles and responsibilities among stakeholders in the heritage field, provincial inventory of heritage places, provincial and municipal registration/designation of heritage resources, appeals, protection, enforcement, inducements for heritage conservation, provision of technical expertise and format of the proposed legislation.

2.0. Ontario Heritage Policy Review -
Intergovernmental Consultation Process

In AMO's submission to the provincial cabinet on May 29, 1990 AMO stressed the need for increased municipal-provincial cooperation and joint policy development processes between the two levels of government.

Joint policy development

AMO applauds the consultative process employed by the Ministry of Culture and Communications in structuring the Ontario Heritage Policy Review. A consultative policy development process moves away from a model of unilateral decision-making on the part of provincial ministries towards a negotiated joint policy development process.

Recommendation 1:

In keeping with the principle of participative decision-making between AMO and the Province of Ontario AMO recommends that the association be involved in devising regulations and implementation mechanisms accompanying the new Ontario Heritage Legislation and that AMO participate in the scheduled Annual Policy Forum on Heritage Conservation.

In the aforementioned cabinet submission AMO requested that provincial ministries prepare a municipal impact statement for any new program or policy initiative.

Recommendation 2:

AMO recommends that the Ministry of Culture and Communications prepare a municipal impact statement for the new Ontario Heritage Legislation including cost projections of the new legislation for municipal governments in Ontario.

3.0. Content Issues addressed by the Proposed Legislation

3.1. Definitional Framework and Purpose of the Legislation (Section 1 and 2)

Definition of Heritage

The Association of Municipalities of Ontario applauds the proposed broad statutory definition of heritage which encompasses three basic categories of heritage resources - immovable heritage, movable heritage (real property), and intangible heritage (For definitions, please refer to Appendix A).

As the new definition radically departs from the traditional exclusive conceptualization of heritage forms as historic architectural structures and archaeological sites, it places heritage conservation concerns in the mainstream of community life. However, AMO believes that it is imperative for the Ministry of Culture and Communications to operationally define the heritage resources encompassed under each of the three distinct yet interrelated categories in order to facilitate the application of the newly proposed Ontario Heritage Act. Given that the three types of heritage resources are not mutually exclusive the identification of heritage resources under each category should conclude with a statement indicating that the listing of heritage resources is not designed to be all inclusive.

Recommendation 3:

AMO recommends that the Ministry of Culture and Communications operationally define the heritage resources encompassed by the three categories of movable, immovable and intangible heritage with the provision that the listing is not necessarily designed to be inclusive.

The proposed piece of legislation should be internally consistent in the usage of the expanded definition of heritage. Thus, AMO recommends that the envisioned statute not only address the inventory, registration and designation of immovable and movable heritage resources but also outline procedures for the registration and designation of intangible heritage resources such as songs and folktales, traditional work skills and techniques, folk festivals, dances etc.

Recommendation 4:

AMO recommends that the Ministry of Culture and Communications be consistent in the usage of the expanded definition of heritage resources throughout the statute.

In the proposed legislation the term "conservation" refers to three types of conservation activities including identification, protection, interpretation and use. Statistics provided by the tourism industry highlight the economic profitability of making heritage resources accessible to the general public.

A 1986 study conducted by the US Pleasure Travel Market found that 87 per cent of visitors to Canada were American and accounted for 75 per cent of foreign tourist expenditures. Respondents to the survey stated that "they were attracted to Canada because of the 'foreign' atmosphere created by ethnic diversity and by the buildings and scenery (Metropolitan Plan Review (Heritage), 1988, pp.5)."

According to Landals (1988) heritage-related tourism in Alberta, for instance, generates approximately \$ 2 billion in revenue and 80,000 man-years in employment.

However, in its response to the provincial discussion paper "Giving our past a future (1987)" AMO stressed that an overly aggressive promotion of heritage resources could entail potential negative effects for the given heritage resource (damage, destruction etc.). Thus, AMO expressed general agreement with the proposed principle for legislative reform of heritage conservation indicating that "public heritage policies and programs must strive to give heritage a function in the economic and social life of the community (p.1)."

At the same time, AMO (1987) cautioned however that "the need to attract capital to heritage building preservation should not overshadow the fundamental intrinsic value of heritage. The integration of natural heritage sites with an economic or social function is more difficult in that increased human activity may tend to reduce the heritage value over time (p.1)."

*Management
Plans for
Heritage Resources*

Recommendation 5:

AMO recommends that the Ministry of Culture and Communications assist heritage interest groups in developing efficient and effective management plans for immovable, movable and intangible heritage resources. These management plans should be designed to ensure that visitors' usage of the heritage resource does not exceed the carrying capacity of the resource.

3.2. Distribution of Roles and Responsibilities among various Stakeholders in the Heritage Field (Sections 3 and 14)

This part of the discussion will exclusively address issues in the provincial - municipal distribution of responsibilities in heritage conservation (Section 3 and 14); we trust that the multiplicity of other stakeholders in the heritage field will forward their own policy position papers commenting on the proposed piece of legislation.

*Heritage
Conservation - A
Provincial
Responsibility*

AMO's response to the discussion paper "Giving our past a future (1987)" highlighted that the ultimate financial responsibility for heritage conservation lies solely with the provincial and federal governments:

"Municipalities cannot be expected to play a central role in financing heritage preservation efforts. Municipalities can encourage and facilitate through the planning process greater private sector participation in the revitalization of heritage structures. However, ...heritage is preserved as a common resource and therefore the province and the federal government have the primary financial responsibility, with municipalities facilitating the efforts through local plans and infrastructure (p.6)."

The AMO's report "New dimensions (1990)" upholds two fundamental key principles in the provincial-municipal financial partnership: adequacy of funding for provincially mandated municipal programs and disentanglement. In accordance with these two principles an expanded mandate for municipal governments in heritage conservation must be accompanied by the provision of adequate financial transfer payments to municipal governments.

The provincial discussion paper "A Strategy for heritage conservation (1990)" uses popular contemporary terminology when speaking of "empowering Ontario's communities to undertake high-quality heritage conservation. Real empowerment necessitates that the provincial government provides financial resources to Ontario's municipalities for the purpose of heritage conservation efforts.

The proposed heritage legislation places a substantial financial burden on municipal governments evidenced in the requirement to provide inducements to the private sector for heritage conservation (including tax abatements) (Section 21), extended municipal support for local custodial institutions (Section 16), training and upgrading of municipal planning staff in heritage conservation (as implied in Section 14, 17, 18) as well as operational and program funding for municipal heritage boards (Section 15).

Recommendation 6:

AMO recommends that the Ministry of Culture and Communications assume full financial responsibility for the newly proposed municipal mandate in heritage conservation including the transfer of:

- *operating and program funding for community custodial institutions (Section 16)*
- *operating and program funding for municipal heritage committees (Section 15)*
- *funding for heritage education for municipal planning staff (Section 14, 17, 18)*
- *full compensation for municipal inducements provided to the private sector (Section 21).*

AMO recognizes that the Ministry of Culture and Communications and the Ministry of Natural Resources constitute the two lead ministries in heritage conservation. Given the expanded definition of "heritage" and "conservation" it is anticipated that the information needs of interest groups in the application of the new statute will be fairly substantial. In order to assist the consumer in obtaining pertinent information on heritage matters AMO recommends that the Ministry of Culture and Communications establish a centrally located heritage information centre which can provide technical information on heritage conservation. A one-stop access information centre dealing with heritage concerns would allow the consumer to quickly retrieve required information saving him/her time and aggravation in contacting the multiplicity of stakeholders in the heritage field in order to solve a particular problem.

Recommendation 7:

AMO recommends that the Ministry of Culture and Communications establish a one-stop access information centre which will provide technical information on heritage conservation.

AMO welcomes the integration of heritage conservation planning within the framework of the Planning Act. Thus, AMO (1987) stated that "as heritage conservation and community planning are interconnected, provincial consideration should be given to formal links between heritage conservation and the municipal planning process. A policy statement under the Planning Act may suit this purpose (p.5)." It is therefore suggested that the statement in subsection 14.2. be amended to affirm the harmonizing of heritage conservation with municipal land use planning.

Recommendation 8:

AMO recommends that the wording "should signal" be replaced by "provide" in subsection 14.2. of the proposed statute.

3.3. Provincial Inventory of Heritage Places (Section 4)

AMO applauds the provincial government's initiative to establish a provincial inventory of movable, immovable and intangible heritage resources. The inclusion of this section in the proposed statute is in keeping with AMO's policy position stated in the association's response to the discussion paper "Giving our past a future (1987)": "The province must assume a greater stake in heritage conservation, including an active role in site identification and protection (p.6)."

AMO also re-emphasizes its previous recommendation which requested that the provincial government undertake a comprehensive documentation of the history of Northern Ontario especially including the history of heritage sites located

in areas without municipal organization. AMO believes that this documentation will be crucial in identifying and gaining an understanding of the heritage resources located in this geographical part of Ontario.

*Equal attention to
various geographical
regions of Ontario*

Recommendation 9:

AMO recommends that the Ministry of Culture and Communications give equal attention to documenting the history of all regions of the province in establishing an inventory of provincial heritage resources.

3.4. Provincial and Municipal Registration/Designation of Heritage Resources (Sections 5,6,10, 17,18 and 20)

*Establishing
evaluation criteria
for heritage
resources*

In order to reduce the subjectivity in selecting and evaluating heritage resources the Ministry of Culture and Communications should outline clearly defined criteria for the registration and designation of heritage resources and the corresponding administrative processes both at the level of the provincial and municipal government. Thus, AMO (1987) requested that the provincial government assist Ontario's municipalities in developing an inventory of heritage resources. AMO recommended that the then Ministry of Culture and Recreation design an implementation manual that provides guidelines for describing and registering heritage buildings and writing by-laws. Without clearly defined criteria the identification and evaluation of heritage resources follows a haphazardous process marked by inconsistencies in heritage selection and classification across the province. In establishing these criteria the Ministry of Culture and Communications could draw on the various identification and evaluations schemes currently in usage in provincial and municipal jurisdictions across Canada and could develop a comprehensive, easily usable system for selecting and evaluating all three types of heritage resources. For example, in 1987 the City of Ottawa published a detailed handbook for evaluating heritage buildings and areas under its jurisdiction.

The establishment of such a scheme of criteria would necessarily involve close consultation between the Ministry of Culture and Communications and effected stakeholders in the heritage field.

The set of criteria employed in evaluating heritage resources for inclusion in an inventory, a register or for designation purposes should be sufficiently broad to allow for the protection and conservation of buildings and structures which though not necessarily of architectural value have played a significant role in the life of the community. Thus, the City of Ottawa, for example, uses the criteria "community context" in assessing the heritage value of a particular building:

"(The criteria 'community context' examines whether)...the building has 1) a strong historical association with its neighbourhood, either in public use or in private use with public associations, 2) historically was and or today is, an integral part of community life, 3) and for sentimental or symbolic reasons, has become a significant part of the community's identity (City of Ottawa, 1987, p. 17)."

Recommendation 10:

AMO recommends that the Ministry of Culture and Communications develop a comprehensive system of criteria which can be employed in identifying heritage resources for inclusion in an inventory, a register and for designation purposes. The set of criteria should include "the historical significance of a building or structure for the life of the municipality" as a standard measurement tool in assessing the value of these particular community resources.

*Alterations/
demolitions of
heritage resources*

The proposed piece of legislation specifies that any alterations or demolitions to designated heritage sites require approval from the minister or his/her delegate in cases of provincial designation or a permit from the municipality in cases of municipal designation (Sections 6 and 18).

AMO addressed the lack of specificity in the usage of the term "alteration" in its critique of the Ontario Heritage Act in 1981:

"An amendment to section 1(a) of the act required to clarify the definition of the term 'alter'. Neither additions to buildings nor any new construction with respect to heritage property is mentioned specifically in the Act. However, the word 'erect', as well as the word 'alter' is used in Part V, Section 42, under heritage conservation districts. This does not occur in Part IV, Section 33, of the Act which deals with individual buildings. Hence, there is some doubt as to whether these activities, when applied to individual building designations are controlled.

In addition, it has been argued that the definition of 'alter' be expanded to include, and thereby regulate, such changes as cleaning, stuccoing and painting (p.20)."

In keeping with its 1981 policy position AMO thus urges the Ministry of Culture and Communications to operationally define the terms "changes" and "alterations" by providing a listing of specific alterations (including additions, new constructions, cleaning, stuccoing and painting) concluding with a statement that the list is not designed to be all inclusive. Only an expanded clear definition of the terms "alterations" and "changes" will allow the provincial and municipal government a sufficient degree of power to protect heritage resources.

The new piece of legislation should also emphasize that the requirements to secure approval/or permit for alteration of a designated heritage building from the respective level of government extends not only to the property owner of a designated heritage building but also to potential tenants inhabiting this building.

"Another refinement to the Act that would provide better control over alterations would be to require all people living in designated buildings, including tenants to apply for approval to alter their dwellings. Consequently, the same penalties would apply to tenants as to owners who disobey the law (AMO Report 48, 1981, p.2)."

*Inspection of
heritage resources*

Furthermore, as proposed in AMO's review of the Ontario Heritage Act (1981) the new statute should include the provision that heritage buildings will undergo an inspection by a qualified professional after alteration in order to ensure that the guidelines set out by provincial/municipal governments for appropriate alteration of heritage structures have been adhered to. According to Lopata (1989) the suggested inspection practice after alteration of heritage properties has been employed successfully in Newark, Delaware which enshrined in its official plan that "renovations to historic buildings would be reviewed by the State of Delaware Bureau of Archaeology and Historic Preservation for Compliance with the United States Department of Interior's Standards for Restoration and Rehabilitation of Historic Properties (p.21)."

Recommendation 11:

AMO recommends that the Ministry of Culture and Communications operationally define the term 'alteration' and 'changes' in section 6.2. and section 18.2. of the proposed legislation taking into account a broad range of alterations including additions, new construction, stuccoing, cleaning and painting with the provision that the list is not designed to be all inclusive.

AMO recommends that the tenants of a designated building be subject to the same requirements of seeking approval/or a permit for the identified types of alterations/changes. Tenants should be subject to the same penalties as the owner for infraction of the heritage act.

AMO recommends that the new statute include the provision that a qualified professional approved by the municipal authorities inspect the designated heritage building before and after the completion of the approved alteration.

AMO underscores the necessity of harmonizing the proposed Ontario Heritage Legislation with the Ontario Building Code, the National Fire Code and the Liquor Licensing Board Regulations particularly in respect to the rehabilitation of designated heritage buildings.

*Objections to
designation*

Section 17.4 and 18.3 indicates that any person, not just the owner, should be able to request that a property be included on the heritage register or be designated by the municipality. AMO recognizes a potential danger in this provision: thus, legislation would allow citizens to possibly delay inclusion of heritage resources in a register/or designation of a heritage resource based upon "frivolous objections". Therefore, AMO argues that the new statute outline specific penalties for individuals who deliberately interfere with the process of registration and designation of heritage resources with frivolous objections. Penalties under the Ontario Heritage Act should be comparable to the penalties for similar offences identified under the Planning Act.

Recommendation 12:

AMO recommends that an individual be penalized for unduly interfering with the process of registration and designation of heritage resources by presenting frivolous objections. Penalties should be similar to those identified under the Planning Act for offences of a similar nature.

In its review of the Ontario Heritage Act (1981) AMO recommended that municipal councils be allowed to designate properties, buildings and structures owned by the provincial government and/or its agencies. AMO is pleased that this recommendation has gained entry into the proposed statute under section 20. The provincial government is thus required to consult with municipal councils in cases where alterations to the designated provincial heritage property are planned.

It is imperative that the consultation procedures (sections 20.2 and 6.3.) to be established by regulations give municipal councils a fair, equitable input into the decision-making process over designation of provincial heritage properties. For example, a possible provincial-municipal consultation committee should not

tip the balance of power in favour of either negotiating party by the mere number of representatives from each party involved in the consultation, or by the selection of the committee chair by the provincial government.

Recommendation 13:

AMO recommends that the consultation procedures addressing issues of municipal designation of provincial heritage properties allow municipal representatives on the consultation committee the same degree of power as their provincial counterparts.

*Conservation Review
Board as the tribunal
addressing
heritage matters*

3.5. Appeals (Section 12)

The Act to provide for the Conservation, Protection and Preservation of the Heritage of Ontario (1974) established the Conservation Review Board as a provincial tribunal composed of three members appointed by the Lieutenant Governor in Council. The Conservation Review Board functions as a clearing house designed to settle disputes about heritage matters at the municipal level (including the conservation of buildings of historical and architectural value (Part IV of the current legislation) and the conservation of resources of archaeological value (Part VI of the current legislation). Under the provisions of the present heritage legislation the Ontario Municipal Board hears appeals regarding heritage conservation districts. At the present time the CRB merely represents an advisory body to municipal councils; in this role CRB lack final binding decision-making powers in heritage matters.

AMO believes that the tribunal processing appeals with respect to provincial and municipal designation of heritage resources is best located with the Conservation Review Board. It is felt that this body is more sensitive to heritage conservation needs than the Ontario Municipal Board and has developed special expertise in the area of heritage conservation over the years.

Given the expanded set of responsibilities it is mandatory that the Conservation Review Board is accrued the legislative right to make final binding decisions in disputes over municipal and provincial designations. The proposed new heritage legislation

should also enshrine the expansion of the resource base of the Conservation Review Board (human resources, access to consulting services with technical expertise in heritage matters etc.) in order to empower the tribunal to adequately accomplish its goals and objectives.

Recommendation 14:

AMO recommends that the Conservation Review Board constitute the tribunal which will make final and binding decisions in settling disputes dealing with provincial and municipal designation of heritage resources. As a judiciary body the Conservation Review Board should be able to alert the parties entering into a legal dispute about possible costs involved in legal proceedings.

3.6. Protection (Section 7, 19, 22, and 23)

*Protection:
clarification of
terminology*

The proposed legislation enables the provincial government to place specific classes of sites under "automatic" protection (statutory protection). Subsection 7.5. indicates that a notice of discovery of a protected site should be given immediately.

AMO argues that both statements are not specific enough and need further clarification: What does automatic protection mean?, How long will this form of protection be in effect? Who should be informed about the discovery of a protected site and when?

Recommendation 15:

AMO recommends that section 7.1. and 7.5. receive further clarification.

AMO pointed out that under the present legislation municipal governments possess insufficient powers to effectively protect heritage resources:

"Municipal governments do not have sufficient legislative authority to effectively exercise the responsibility extended to them. Section 34 of the Ontario Heritage Act provides only the power of persuasion to prevent a site demolition after the conclusion of a 180 day freeze on buildings. AMO believes that if mutually satisfactory arrangements cannot be achieved within this time municipal councils should have greater authority to protect heritage sites. Effective preservation tools such as permanent site protection powers, demolition fees, conditional demolition permits and acquisition and expropriation powers should all be examined for municipal council use (pp.6)."

*Expansion of
municipal protective
powers*

The proposed statute still gives municipalities only limited protection powers over important heritage resources: thus, according to section 17.3 the inclusion of a property in a heritage register provides merely temporary protection of the heritage feature of the property for the time-span of 60 days. The proposed legislation fails to indicate how long a property is protected in cases where a heritage impact order is in effect (Section 19). Municipal acquisition of heritage property including real and personal property (Section 22) appears to be the strongest protective mechanism for heritage resources placed at the disposal of municipalities in the new legislation.

Recommendation 16:

AMO recommends that municipalities be given stronger protection mechanisms over heritage resources than currently envisioned in the proposed legislation. Thus, the inclusion of a heritage property in a register and the issuance of a Heritage Impact Order should provide protection of the heritage resource for a period of 90 days with the provision of an additional 90 days extension by municipal resolution.

***Heritage Impact
Statements***

Section 19 of the proposed statute enables municipalities to require heritage impact statements from developers whose projects may adversely affect existing heritage property. The proposal does not detail the essential components and standards of heritage impact statements. For example, the Alberta Historic Resources Act explicitly requires that "impact assessments and mitigative measures must be carried out by qualified persons and scientific work must be carried out to the same standard as described for research permits (Landals, 1988, p. 12)." In Alberta, the requirement of a heritage impact statement has today been extended to industry, commercial development and government projects. Only private landowners have been exempted from this particular provision of the Alberta Historic Resources Act.

Recommendation 17:

AMO recommends that the Ministry of Culture and Communications establish clear guidelines and standards for heritage impact statements.

3.7. Enforcement (Section 10 and 24)

***Penalties for
infractions of the
Heritage Act***

In its critique of the Ontario Heritage Act (1981) AMO argued for an increase in the maximum penalty from \$50,000 to \$250,000 for infractions of the Act by corporations. The association is pleased that the proposed statute has established a meaningful deterrent against infractions of the proposed Heritage Act by raising the maximum penalty to \$50,000 (and two years imprisonment) for individual offenders and to \$1,000,000 (and two years imprisonment for responsible authorities) for corporate offenders.

***Maintenance
standards for
heritage resources***

AMO urges the Ministry of Culture and Communications to clearly define appropriate maintenance standards for immovable and movable heritage property. In order to ensure the sustainability of tangible heritage resources the Ministry of Culture and Communications should provide technical assistance to owners of heritage resources in developing long-term management plans outlining the individual maintenance requirements for this particular heritage resource.

The Ministry of Culture and Communications needs to set aside sufficient human resources in order to provide the initial consultation with the owner of the heritage property, to devise the management plan and to monitor and enforce the implementation of the plan over time.

Recommendation 18:

AMO recommends that the Ministry of Culture and Communications clearly identify appropriate maintenance standards for a given type of heritage property and that the ministry set aside sufficient resources to devise, monitor and enforce maintenance management plans for heritage property.

AMO wishes to emphasize that similar to powers outlined in section 10.5. - Maintenance of movable heritage property - municipalities should be accrued the right to obtain court orders for the maintenance of both movable and immovable heritage resources threatened by neglect. The government should provide municipal councils with the necessary financial and human resources to devise, monitor and enforce appropriate maintenance standards for heritage property under municipal jurisdiction.

Recommendation 19:

AMO recommends that municipal councils be given legislative rights to obtain a court order for the maintenance of heritage property threatened by neglect. The provincial government should provide financial resources for municipalities to devise, monitor and enforce proper maintenance standards for heritage properties.

3.8. and Municipal Inducements for Heritage Conservation
(Sections 11 and 21)

*Municipal tax
abatements*

Restoration of heritage property usually results in a higher assessment value of the property and thus, entails an increase in property taxes. The rise in taxation constitutes a disincentive for private owners. In order to balance this disincentive municipalities have the option of forgiving the increase in property taxes attributable to restoration for a finite or infinite period of time.

Municipal tax abatement systems are currently practised in such cities as Victoria (BC), Quebec City (QC) or Boston (Mass.). According to Phillips-Cleland (1977) the provision of tax abatements for heritage conservation efforts has a number of advantages:

"This method...encourage(s) private owners to restore buildings with only a loss of some revenue for the city.

It would not be necessary for the city to purchase the building. The loss of any tax revenue would be much lower than the cost of buying the building. (Phillips-Cleland, 1977, p.37)."

On the other hand, Phillips-Cleland (1977) recognizes that municipal tax abatement is not necessarily a panacea for ensuring the protection of heritage properties: thus, the private property owner has to take the initiative to restore the heritage property leaving municipal governments without definite control over the protection and conservation of a heritage property. First and foremost however, AMO opposes financing any municipal inducements for heritage conservation to the private sector from the municipal tax revenue base, as such a procedure weakens the municipal tax base. As heritage sites are not equally distributed across Ontario's municipalities, this procedure would cause inequitable reductions in the tax revenues for Ontario municipalities.

Recommendation 20:

AMO does not support section 21.2 of the proposed heritage legislation. AMO would only consent to the provision that municipalities provide tax abatements to owners of designated heritage buildings if the Province of Ontario compensated municipalities for the loss of tax revenue by specifically providing transfer payments to recover these costs.

Compensation

As of 1987, British Columbia and Alberta, were the only two Canadian provinces which provide compensation to owners of designated heritage properties. The arguments in favour of compensation emphasize that compensation "ensures equity and fair treatment for heritage property owners who may suffer real or perceived losses due to designation. Compensation may also act as a deterrent to the abuse of designation powers by municipal and decision-makers (Ministerial Task Force on Heritage Conservation, 1987, p. 34)." On the other hand, compensation payments may inhibit municipal and governments from designating heritage property and thus preventing protection of heritage resources.

Recommendation 21:

AMO recommends that the proposed new heritage legislation not include the provision that municipal governments compensate property owners of designated heritage buildings for real or perceived economic losses due to designation.

3.9. Provision of Technical Expertise (Sections 13 and 15)

*Equal access to MCC's
technical expertise*

The expanded definition of "heritage" and "conservation" necessitates the provision of a substantial amount of technical expertise by the Ministry of Culture and Communications to the multiplicity of interest groups in the heritage field. AMO thus welcomes the establishment of a advisory body on heritage concerns.

However, AMO strongly urges that technical assistance on heritage matters will not be restricted to large urban centres located in southern Ontario. Thus, it is important to recognize that small communities and rural remote municipalities receive equal access to the necessary technical resources in heritage conservation than their metropolitan counterparts. Consequently, AMO reiterates its previous recommendation (AMO Report No. 48, The Ontario Heritage Act) which proposed that the regional offices of the Ministry of Culture and Communications be adequately staffed in order to provide high quality services and technical expertise to municipalities province-wide.

Recommendation 22:

AMO recommends that the Ministry of Culture and Communications provide all Ontario municipalities with equal access to high quality technical expertise in heritage conservation.

***Municipal Heritage
Board***

AMO favoured an expanded composition and mandate of the current Local Architectural Conservation Advisory Committees (LACAC) in its two previous reports on heritage - Critique of the Ontario Heritage Act (1987) and Giving our past a future (1987).

The metamorphosis of LACACs into Municipal Heritage Committees depicted under section 15 raises a number of concerns apart from the financial implications already addressed in part 4.2. of this report. Thus, AMO believes that the composition of municipal heritage committees and their interrelationship vis-a-vis municipal councils need to be clearly delineated. Some argue that municipal heritage boards be composed exclusively of representatives of local heritage interest groups, while others favour a much wider representation of community interests on these committees including members from industry, developers and the commercial sector. The proposed legislation envisions municipal heritage committees to function primarily in an advisory capacity to municipal governments; while some segments of the heritage field applaud this distribution of power, other fractions feel that a municipal heritage committee as a mere advisory body to council will lack the necessary power to make its voice heard vis-a-vis a municipal council with limited interests in heritage conservation.

Similarly, decisions have to be made regarding the role and jurisdiction of municipal heritage boards in upper-tier municipalities vis-a-vis the mandate of their possible counterparts in local area municipalities.

Recommendation 23:

AMO recommends that municipal heritage boards function in an advisory capacity to municipal councils similarly to the currently existing LACACs. Members on municipal heritage boards should be appointed by council.

4.0. Format of the Proposed Legislation

The proposed statute employs the terminology "local municipality" and "municipality" in an inconsistent manner.

Recommendation 24:

AMO recommends that the term "local municipality" be replaced by the term "municipality" throughout the legislation.

The wording of subsection 1.3. (Statutory Definition of Heritage) needs to be changed in order to make an affirmative statement that the newly proposed Ontario Heritage Act will be harmonized with other relevant pieces of legislation as quickly as possible.

Recommendation 25:

AMO recommends that the word 'over time' in subsection 1.3. be deleted.

5.0 Conclusion

The preceding discussion has presented an analysis of crucial issues raised by the proposed heritage legislation from the perspective of municipalities across Ontario. An overview of the recommendations forwarded in this report is presented in section 6.0 of this report. AMO would be more than happy to discuss any further questions which may result from this policy position paper with the Ministry of Culture and Communications in the near future.

6.0. Summary of Recommendations

Recommendation 1

In keeping with the principle of participative decision-making between AMO and the Province of Ontario AMO recommends that the association be involved in devising regulations and implementation mechanisms accompanying the new Ontario Heritage Legislation and that AMO participate in the scheduled Annual Policy Forum on Heritage Conservation.

Recommendation 2

AMO recommends that the Ministry of Culture and Communications prepare a municipal impact statement for the new Ontario Heritage Legislation including cost projections of the new legislation for municipal governments in Ontario.

Recommendation 3

AMO recommends that the Ministry of Culture and Communications operationally define the heritage resources encompassed by the three categories of movable, immovable and intangible heritage with the provision that the listing is not necessarily designed to be inclusive.

Recommendation 4

AMO recommends that the Ministry of Culture and Communications be consistent in the usage of the expanded definition of heritage resources throughout the statute.

Recommendation 5

AMO recommends that the Ministry of Culture and Communications assist heritage interest groups in developing efficient and effective management plans for immovable, movable and intangible heritage resources. These management plans should be designed to ensure that visitors' usage of the heritage resources does not exceed the carrying capacity of the resource.

Recommendation 6

AMO recommends that the Ministry of Culture and Communications assume full financial responsibility for the newly proposed municipal mandate in heritage conservation including the transfer of:

- operating and program funding for community custodial institutions (Section 16)
- operating and program funding for municipal heritage committees (Section 15)
- funding for heritage education for municipal planning staff (Sections 14, 17, 18)
- full compensation for municipal inducements provided to the private sector (Section 21)

Recommendation 7

AMO recommends that the Ministry of Culture and Communications establish a one-stop access information centre on heritage conservation.

Recommendation 8

AMO recommends that the wording "should signal" be replaced by "provide" in subsection 14.2. of the proposed statute.

Recommendation 9

AMO recommends that the Ministry of Culture and Communications give equal attention to documenting the history of all regions of the province in establishing an inventory of heritage resources.

Recommendation 10

AMO recommends that the Ministry of Culture and Communications develop a comprehensive system of criteria which can be employed in identifying heritage resources for inclusion in an inventory, a register and for designation purposes. The set of criteria should include "the historical significance of a building or structure for the life of the municipality" as a standard measurement tool in assessing the value of these particular community resources.

Recommendation 11

AMO recommends that the Ministry of Culture and Communications operationally define the term "alteration" and "changes" in Section 6.2 and Section 18.2 of the proposed legislation taking into account a broad range of alterations including additions, new construction, stuccoing, cleaning and painting with the provision that the list is not designed to be all inclusive.

AMO recommends that the tenants of a designated building be subject to the same requirements of seeking approval/or a permit for the identified types of alterations/changes. Tenants should be subject to the same penalties as the owner for infractions of the heritage act.

AMO recommends that the new statute include the provision that a qualified professional approved by the municipal authorities inspect the designated heritage building before and after the completion of the approved alteration.

Recommendation 12

AMO recommends that an individual be penalized for unduly interfering with the process of registration and designation of heritage resources by presenting frivolous objections. Penalties should be similar to those identified under the Planning Act for offences of a similar nature.

Recommendation 13

AMO recommends that the consultation procedures addressing issues of municipal designation of heritage properties allow municipal representatives on the consultation committee the same degree of power as their counterparts.

Recommendation 14

AMO recommends that the Conservation Review Board constitute the tribunal which will make final and binding decisions in settling disputes dealing with and municipal designation of heritage resources.

As a judiciary body the Conservation Review Board should be able to alert the parties entering into a legal dispute about possible costs involved in legal proceedings.

Recommendation 15

AMO recommends that Section 7.1. and 7.5. receive further clarification.

Recommendation 16

AMO recommends that municipalities be given stronger protection mechanisms over heritage resources than currently envisioned in the proposed legislation. Thus, the inclusion of a heritage property in a register and the issuance of a heritage impact order should provide protection of the heritage resource for a period of 90 days with the provision of an additional 90 days extension by municipal resolution.

Recommendation 17

AMO recommends that the Ministry of Culture and Communications establish clear guidelines and standards for heritage impact statements.

Recommendation 18

AMO recommends that the Ministry of Culture and Communications clearly identify appropriate maintenance standards for a given type of heritage property and that the ministry set aside sufficient resources to devise, monitor and enforce maintenance management plans for heritage property.

Recommendation 19

AMO recommends that municipal council be given the legislative rights to obtain a court order for the maintenance of heritage property threatened by neglect. The provincial government should provide financial resources for municipalities to devise, monitor and enforce proper maintenance standards for heritage properties.

Recommendation 20

AMO does not support section 21.2 of the proposed legislation. AMO would only consent to the provision that municipalities provide tax abatements to owners of designated heritage buildings if the Province of Ontario compensated municipalities for the loss of tax revenues by forwarding transfer payments to municipalities to recover these costs.

Recommendation 21

AMO recommends that the proposed new heritage legislation not include the provision that municipal governments compensate property owners of designated heritage buildings for real or perceived economic losses due to designation.

Recommendation 22

AMO recommends that the Ministry of Culture and Communications provide all Ontario municipalities with equal access to high quality technical expertise in heritage conservation.

Recommendation 23

AMO recommends that the municipal heritage committees function in an advisory capacity to municipal councils similarly to the currently existing LACACs. Members on municipal heritage committees should be appointed by council.

Recommendation 24

AMO recommends the term "local municipality" be replaced by the term "municipality" throughout the legislation.

Recommendation 25

AMO recommends that the word "over time" in subsection 1.3. be deleted.

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APPENDIX A

DEFINITION OF MOVABLE, IMMOVABLE AND INTANGIBLE HERITAGE

Our heritage resources are found in a wide spectrum of natural and cultural forms; these can be grouped into three broad categories:

Immovable Heritage - land or land-based resources, such as buildings and natural areas, that are "fixed" in specific locations; for example:

- ♦ **structure** - buildings, ruins, and engineering works such as bridges
- ♦ **sites** - archaeological sites, battlegrounds, quarries, earth science sites such as rock formations, and life science sites such as rare species habitats
- ♦ **areas** - streetcaples, neighbourhoods, gardens, lakes, and rivers and other natural, scenic, and cultural landscapes

Movable Heritage - resources, such as artifacts and documents, that are easily "detachable" and can be transported from place to place; for example:

- ♦ **objects** - artifacts, such as artworks, utensils, and adornments, and earth and life science specimens, such as fossils and crystals
- ♦ **documents** - including newspapers, letters, films, and recordings

Intangible Heritage - such as traditional skills and beliefs: for example:

- ♦ **values** - attitudes, beliefs, and tastes
- ♦ **behaviours** - including skills, games, dances, and ceremonies
- ♦ **speech** - stories and narratives, songs, sayings, and names

While such categories are useful, there can be a danger in thinking of heritage resources as discrete and compartmentalized "things". On closer examination some elements defy neat categorization: archaeological sites, for instance, may yield up easily portable artifacts; documents may be of interest as historical artifacts as much as for the information they contain; buildings are sometimes moved around; various types of intangible heritage can be documented, thereby assuming tangible form.

A too strict taxonomy also conceals the inseparable nature of many heritage elements. It is impossible to talk about the significance of a heritage structure, for example, without considering its site and the wider physical context - street, neighbourhood, or landscape. Similarly, a building or indeed any human-made feature cannot be understood without reference to the values and skills of its designers and builders. Tangible things of course also acquire important intangible dimensions over time - the family heirloom preserved in the face of adversity, for example, or the Ontario legislative building as a symbol of our tradition of parliamentary democracy.

Taken from

Ministry of Culture and Communications (1990). A strategy for conserving Ontario's heritage - Report of the Ontario Heritage Policy Review. Toronto, Ontario: Ministry of Culture and Communications.



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